IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

THURSDAY, THE 11TH OCTOBER 2007 / 19TH ASWINA 1929

MACA.No. 341 of 2003()

OPMV.2101/1999 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THRISSUR
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APPELLANT/2ND RESPONDENT

NATIONAL INSURANCE CO.LTD.,
REPRESENTED BY ITS ASSISTANT MANAGER,
KOCHI REGIONAL OFFICE T.P.CELL, M.G.ROAD,
ERNAKULAM.

BY ADV. SRI.P.R.RAMACHANDRA MENON

RESPONDENTS: PETITIONER & 1ST RESPONDENT RESPECTIVELY
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1. C.S.SUDHAKARAN, S/O. SANKUNNI,
CHEEROTH HOUSE, PONNORE DESOM,
EDAKALATHOOR VILLAGE, THRISSUR.

2. M.L.THAMBURAJAN, S/O.LANAPPAN M.J.,
MULAKKAL HOUSE, P.O.EDAKALATHOOR, PANAPPUR,
THRISSUR.

BY ADV. SRI.P.VIJAYA BHANU
SRI.TONY MATHEW

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 11/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

M.A.C.A. NO. 341 OF 2003

Dated this the 11th day of October, 2007

J U D G M E N T

The 2nd respondent insurer in O.P.(MV) 2101/1999 on the file of the Motor Accidents Claims Tribunal, Thrissur, is the appellant. The appeal is filed against the award passed by the Tribunal making the appellant liable for the compensation claimed by the 1st respondent. The short facts necessary for disposal of the appeal are as follows:

2. The first respondent was travelling in a goods Autorickshaw bearing registration No.KL-8/K 3470 driven by the 2nd respondent along the Kunnamkulam-Adupputtikunnu road on 2.8.1999. When the vehicle reached Adupputtikunnu, the 2nd respondent lost control over the vehicle and it capsized. The 1st respondent, who was traveling in the vehicle, sustained injuries. He filed original petition claiming compensation of Rs.1,50,000/-. The owner cum driver did not appear and contest. The appellant alone contested. Negligence alleged was denied and the quantum of compensation was disputed. It was contended that the vehicle involved in this case was a goods Autorickshaw and as such the

appellant insurer is not liable to indemnify the insured. The Tribunal found that the accident occurred due to the negligence of the 2nd respondent. It awarded a compensation of Rs.52,550/- and directed the appellant insurer to pay the amount on the ground that the vehicle was covered with a valid insurance policy.

3. The evidence on record shows that the accident occurred due to the negligence of the owner cum driver of the Autorickshaw. So the finding of the Tribunal that the accident occurred due to the negligence of the driver is only to be confirmed. The quantum of amount awarded also cannot be said to be excessive. The medical evidence shows that there was midtarsal sprain of right foot, abrasions over right big toe, undisplaced fracture of the medical tibial condyle of left knee and fracture at the base of III metatarsal of right foot. It is also to be noted that the owner of the vehicle had never appeared and contested. So I am not interfering with the quantum of compensation awarded in this case. The Tribunal found that the vehicle was covered with a valid policy of insurance and hence the appellant is liable to pay the amount. Ext.B1 is the policy which shows that the appellant had only collected the basic premium of Rs.1797. Learned counsel appearing for the appellant made

available the India Motor tariff. It shows that when the gross weight of the vehicle is upto 2000 kilograms, the basic premium is Rs.1797/-. An amount Rs.15/- is collected for the employer and another Rs.75/- for 3rd party property damage. So no extra premium was collected for a passenger. Further, the vehicle involved in this case is an Autorickshaw and no permit was granted for a passenger. So the finding of the Tribunal that the insurer is liable to pay compensation is to be interfered. I direct the insurer to pay the amount and then recover it from the owner cum driver, if so advised.

In the result, the appeal is allowed in part. The quantum of compensation awarded is confirmed. But the direction to the appellant to indemnify the insured is hereby set aside. The appellant is directed to deposit the amount and then recover the same from the owner cum driver, if so advised.

K.PADMANABHAN NAIR, JUDGE

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